



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220711-0151]

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Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Common Pool Fishery and Other Measures for Fishing Year 2023

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; possession and trip limit implementation.

SUMMARY: This action implements measures for the Northeast multispecies common pool fishery and other measures under Regional Administrator authority for the 2023 fishing year. This action is necessary to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent in-season closures or quota overages. These measures include possession and trip limits, the allocation of zero trips into the Closed Area II Yellowtail Flounder/Haddock Special Access Program for common pool vessels to target yellowtail flounder, and the closure of the Regular B Days-at-Sea Program.

DATES: Effective at 0001 hours on May 1, 2023, through April 30, 2024.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Policy Analyst, 978-281-9232.

SUPPLEMENTARY INFORMATION: The Northeast Multispecies Fishery Management Plan (FMP) regulations allow the Regional Administrator to implement possession limits for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs. This action implements a number of these management measures for the 2023 fishing year, effective May 1, 2023.

Common Pool Trip Limits

Regulations at § 648.86(o) allow the Regional Administrator to implement or adjust a per-Day-at-Sea (DAS) possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-annual catch limit (sub-ACL) in that fishing year. The possession and trip limits implemented for the start of the 2023 fishing year are included in Tables 1 and 2 below. These possession and trip limits were developed based on the common pool sub-ACLs that will be in effect on May 1, 2023, including those set by Framework Adjustment 63 to the FMP and those that are in place as default specifications consistent with the current regulations at § 648.90(a)(3). NMFS considered preliminary 2023 sector rosters, expected common pool participation, and common pool fishing activity in previous fishing years. NMFS will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, will make further adjustments to common pool management measures based on common pool catch. NMFS may also make necessary changes to the common pool possession and trip limits in consideration of fishing year 2022 catch information in relation to any new catch limits approved in Framework 65.

Under default specification regulations, if the default specifications set at 75 percent of the previous year's amount exceed the Council's recommendations for any stock for the current year, the specifications for that stock shall be reduced to the Council's recommendations. During its December 2022 meeting, the New England Fishery Management Council adopted Framework Adjustment 65 to the Northeast Multispecies FMP, which, if approved, would modify the common pool sub-ACLs for several stocks. NMFS is working to publish a proposed rule to request comment on Framework 65, but the final rule for that action is not expected to be in effect until after the beginning of the fishing year. Consequently, default specifications will be in place until that rule is final, and, when developing the trip limits in this action, NMFS took into account Council-recommended sub-ACLs that may be implemented in Framework 65. The trip limits in this action were designed

to not result in the common pool exceeding any sub-ACLs or trimester total allowable catch (TAC) that may be implemented by Framework 65. Based on this information, NMFS projects that these adjustments will facilitate optimized harvest of the common pool quotas, while preventing early trimester closures, and preventing catch from exceeding the 2022 fishing year sub-ACLs.

For Handgear A and Handgear B vessels, possession and trip limits for Georges Bank (GB) and Gulf of Maine (GOM) cod are tied to the possession and trip limits for groundfish DAS vessels. The default cod trip limit is 300 lb (136 kg) for Handgear A vessels and 75 lb (34 kg) for Handgear B vessels. If the GOM or GB cod limit for vessels fishing on a groundfish DAS drops below 300 lb (136 kg), then the respective Handgear A cod trip limit must be reduced to the same limit. Similarly, the Handgear B trip limit must be adjusted proportionally to the DAS limit (rounded up to the nearest 25 lb (11 kg)). In accordance with this process, the Handgear A and Handgear B possession and trip limits for GB and GOM cod are as listed below in Table 2.

Vessels with a Small Vessel category permit can possess up to 300 lb (136 kg) of cod, haddock, and yellowtail flounder, combined, per trip. Additionally, for these vessels, the trip limit for all stocks is equal to the landing limits per DAS applicable to multispecies DAS vessels. This is necessary to ensure that the trip limit applicable to the Small Vessel category permit is consistent with the trip limits for other common pool vessels, as described above.

Weekly quota monitoring reports for the common pool fishery can be found on NMFS' website at:

<https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/nemultispecies.html>. NMFS will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, will make additional adjustments to common pool management measures.

Table 1 -- 2023 Fishing Year Common Pool Possession and Trip Limits

Stock	2022 Trip Limit
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GB Cod (outside Eastern U.S./Canada Area)	100 lb (45.4 kg) per DAS, up to 200 lb (90.7 kg) per trip
GB Cod (inside Eastern U.S./Canada Area)	
GB Cod [Closed Area II Yellowtail Flounder/Haddock SAP (for targeting haddock)]	500 lb (226.8 kg) per trip
GOM Cod	200 lb (90.7 kg) per DAS, up to 400 lb (181.4 kg) per trip
GB Haddock	50,000 lb (22,679.62 kg) per trip
GOM Haddock	1,000 lb (453.6 kg) per DAS, up to 2,000 lb (907.2 kg) per trip
GB Yellowtail Flounder	100 lb (45.4 kg) per trip
Southern New England/Mid-Atlantic (SNE/MA) Yellowtail Flounder	100 lb (45.4 kg) per DAS, up to 200 lb (90.7 kg) per trip
Cape Cod (CC)/GOM Yellowtail Flounder	1,000 lb (453.6 kg) per DAS, up to 2,000 lb (907.2 kg) per trip
American plaice	2,000 lb (907.2 kg) per DAS, up to 4,000 lb (1,814.4 kg) per trip
Witch Flounder	1,500 lb (680.4 kg) per trip
GB Winter Flounder	250 lb (113.4 kg) per trip
GOM Winter Flounder	1,000 lb (453.6 kg) per trip
SNE/MA Winter Flounder	2,000 lb (907.2 kg) per DAS, up to 4,000 lb (1,814.4 kg) per trip
Redfish	Unlimited
White hake	1,500 lb (680.4 kg) per trip
Pollock	Unlimited
Atlantic Halibut	1 fish per trip
Windowpane Flounder	Possession Prohibited
Ocean Pout	
Atlantic Wolffish	

Note: Minimum fish sizes apply for many groundfish species, but are not included in this rule. Please see 50 CFR 648.83 for applicable minimum fish sizes.

Table 2 -- 2023 Fishing Year Cod Trip Limits for Handgear A, Handgear B, and Small Vessel Category Permits

Permit	Initial 2023 Trip Limit
Handgear A GOM Cod	200 lb (90.7 kg) per trip
Handgear A GB Cod	100 lb (45.4 kg kg) per trip
Handgear B GOM Cod	25 lb (11 kg) per trip
Handgear B GB Cod	25 lb (11 kg) per trip
Small Vessel Category	300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined; additionally, vessels are limited to the common pool DAS limit for all stocks.

Table 3 includes the initial common pool trimester TACs for fishing year 2023.

These trimester TACs are based on preliminary sector rosters. However, individual permit holders have until the end of the 2022 fishing year (April 30, 2023) to drop out of a sector and fish in the common pool fishery for the 2023 fishing year. Therefore, it is possible that the sector and common pool catch limits, including the trimester TACs, may change due to changes in sector rosters. If changes to sector rosters occur, updated catch limits and/or possession and trip limits will be announced as soon as possible in the 2023 fishing year to reflect the final sector rosters as of May 1, 2023. NMFS is working to publish a proposed rule to request comment on updated 2023 specifications as recommended by the New England Fishery Management Council in Framework Adjustment 65. If approved, Framework Adjustment 65 would make additional changes to common pool sub-ACLs. There could be changes to common pool trimester TACs and possession and trip limits as a result.

Table 3 -- Initial Common Pool Trimester Total Allowable Catches for Fishing Year 2023 (mt, live weight)

Stock	Trimester Total Allowable Catches		
	Trimester 1	Trimester 2	Trimester 3
GB Cod	1.3	1.6	1.8
GOM Cod	4.3	2.9	1.6
GB Haddock	40.0	48.8	59.2
GOM Haddock	6.2	6.0	10.8
GB Yellowtail Flounder	0.6	0.9	1.5
SNE/MA Yellowtail Flounder	0.5	0.7	1.3
CC/GOM Yellowtail Flounder	13.4	6.1	4.0
American Plaice	35.5	3.8	8.6
Witch Flounder	16.4	6.0	7.5
GB Winter Flounder	1.0	2.9	8.2
GOM Winter Flounder	8.0	8.2	5.4
Redfish	24.7	30.6	43.4
White Hake	5.7	4.7	4.7
Pollock	24.1	30.1	31.8

Closed Area II Yellowtail Flounder/Haddock Special Access Program

The regulations at § 648.85(b)(vii) allow the Regional Administrator to determine the total number of common pool trips that may be declared into the Closed Area II Yellowtail Flounder/Haddock Special Access Program (SAP) to target yellowtail flounder. This action

allocates zero trips for common pool vessels to target yellowtail flounder within the Closed Area II Yellowtail Flounder/Haddock SAP for fishing year 2023. As a result, this SAP is only open to target haddock, from August 1, 2023, through January 31, 2024. Northeast multispecies vessels fishing in the SAP must fish with a haddock separator trawl, a Ruhle trawl, or hook gear.

The Regional Administrator determines the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder catch limit and the amount of GB yellowtail flounder caught outside of the SAP. Allocating trips to target yellowtail flounder in the Closed Area II Yellowtail Flounder/Haddock SAP is discretionary if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit, for a total catch of 2,250,000 lb (1,020,600 kg). This calculation considers projected catch from all vessels from the area outside the SAP. Based on the fishing year 2023 GB yellowtail flounder groundfish sub-ACL implemented by Framework Adjustment 63 of 220,462.3 lb (100,000 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP. Further, given the low GB yellowtail flounder catch limit, catch rates outside of this SAP are more than adequate to fully harvest the 2023 GB yellowtail flounder allocation.

If approved, Framework Adjustment 65 would not change the 2023 GB yellowtail flounder sub-ACL. As a result, the final rule implementing Framework 65 is not expected to allocate trips to the SAP to target yellowtail flounder.

Regular B DAS Program

The regulations at § 648.85(b)(6)(vi) authorize the Regional Administrator to close the Regular B DAS program by prohibiting the use of Regular B DAS when the continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP or the Regular B DAS Program. One reason for terminating the program is an inability to constrain common pool catches to the Incidental Catch TACs.

Framework Adjustment 63 implemented Common Pool Incidental Catch TACs for

the Regular B DAS Program for the 2022 fishing year (Table 4). These TACs are further divided into Quarterly Incidental Catch TACs to be monitored and managed during each calendar quarter.

Table 4 -- Fishing year Total and Quarterly Incidental Catch TACs for the Regular B DAS Program (mt, live weight)

Stock	Total Incidental Catch TAC (mt)	Quarterly Incidental Catch TAC (mt)			
	2023	1st Quarter (13 percent)	2nd Quarter (29 percent)	3rd Quarter (29 percent)	4th Quarter (29 percent)
GB Cod	0.05	0.01	0.01	0.01	0.01
GOM Cod	0.09	0.01	0.03	0.03	0.03
GB Yellowtail Flounder	0.03	0.00	0.01	0.01	0.01
CC/GOM Yellowtail Flounder	0.23	0.03	0.07	0.07	0.07
American Plaice	2.40	0.31	0.70	0.70	0.70
Witch Flounder	1.49	0.19	0.43	0.43	0.43
SNE/MA Winter Flounder	0.38	0.05	0.11	0.11	0.11

Given that the Incidental Catch TACs allocated to the Regular B DAS Program for several stocks are very small, in-season management of the Regular B DAS Program is likely to be extremely difficult and impractical. Implementation of an in-season action to close the Regular B DAS Program once a Quarterly Incidental Catch TAC for a stock has been reached would not be possible to complete quickly enough to prevent further catch of that stock.

As a result, it is unlikely that catch can be effectively limited to the Incidental Catch

TACs during fishing year 2023, and we project that continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP and the Regular B DAS Program. The Regular B DAS Program will be closed and use of Regular B DAS is prohibited for the 2023 fishing year, through April 30, 2024. This applies to all vessels issued a limited access Northeast multispecies permit.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be contrary to the public interest and is unnecessary.

Regulations at § 648.86(o) authorize the Regional Administrator to adjust the Northeast multispecies possession and trip limits for common pool vessels in order to prevent the overharvest or under-harvest of the pertinent common pool quotas. This action sets the initial common pool possession and trip limits on May 1, 2023, for the 2023 fishing year. The possession and trip limits implemented through this action help to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent in-season closures or quota overages. Delay of this action would leave the common pool fishery with the possession and trip limits found in § 648.86, which are too high to control catch. This would likely lead to early closure of a trimester and quota overages. Any overage of the quota for either of the first two trimesters must be deducted from the Trimester 3 quota, which could substantially disrupt the trimester structure and intent to distribute the fishery across the entire fishing year. An overage reduction in Trimester 3 would further reduce fishing opportunities for common pool vessels and likely result in early closure of Trimester 3. Additionally, any overage of the annual quota would be deducted from common pool's quota for the next fishing year, to the

detriment of this stock and diminishing fishing opportunities in the following fishing year.

The regulations at § 648.85(b)(3)(vii) require that the Regional Administrator announce the total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP on or about June 1. The Regional Administrator's announcement is included in this action to meet this regulatory requirement. Doing so ensures that the fishing industry has sufficient notice in order to plan their activities in the new fishing year. This action occurs annually, and industry participants are accustomed to it and expect its timely implementation. Given the low quota for GB yellowtail flounder in recent years, no trips have been allocated to this SAP from fishing year 2010 to fishing year 2022.

The regulations at § 648.85(b)(6)(vi) authorize the Regional Administrator to close the Regular B DAS program by prohibiting the use of Regular B DAS when the continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP or the Regular B DAS Program. The Regular B DAS program closure implemented through this action will prevent an overage of the Incidental Catch TACs. Delay of this action would provide vessel owners an opportunity to participate in the Regular B DAS Program, but participation and catch in the program may cause the allocation to be exceeded. In addition to the adverse consequences that are against the public interest, delaying implementation of this action for prior notice and opportunity for comment is unnecessary. These processes were established with prior notice and opportunity for comment. They were established to provide for regular and timely implementation of necessary catch limits to avoid adverse economic or ecological consequences that are not in the public interest. Further, adjusting catch limits in accordance with current conditions and limits provides maximum fishing opportunities practicable that avoid excess catch that may result in overfishing. Fishing industry participants and other stakeholders expect these actions to occur annually and in-season. They are regular occurrences to which participants have become accustomed. For the reasons above, delay of this action for additional prior notice

and the opportunity for public comment and the 30-day delayed effectiveness period are unnecessary and against the public interest because they would undermine management objectives of the FMP and cause unnecessary negative economic impacts to the common pool fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 6, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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